

[NOT FOR PUBLICATION]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 5/27/08

EDWARD KIMLEY,

Petitioner,

-against-

WARDEN JANICE M. KILLIAN, FEDERAL
CORRECTIONAL INSTITUTION OTISVILLE, NY
& J. PETRUCCI, DISCIPLINARY HEARING
OFFICER, FEDERAL CORRECTIONAL
INSTITUTION, SCHUYLKILL, PA,

Respondents.

MEMO ENDORSED

08 Civ. 4385 (CM) (AJP)

REPORT AND RECOMMENDATION

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 6/11/08
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ANDREW J. PECK, United States Magistrate Judge:

To the Honorable Colleen McMahon, United States District Judge:

Although petitioner currently is incarcerated at FCI Otisville in this District, his § 2241 petition challenges a disciplinary hearing that occurred at FCI Schuylkill, Pennsylvania. Accordingly, in the interest of justice, I recommend that the petition be transferred to the Middle District of Pennsylvania, where FCI Schuylkill is located.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections.

See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the

6/9/2008 - I have reviewed the objection filed by petitioner. He has correctly said that the appropriate custodian (the Warden of FCI Otisville), but that does not mean that the Southern District of New York is the appropriate place to litigate about events that occurred in the Middle District of Pennsylvania, where the other defendants can be found. Warden Killian is only a nominal defendant as he had nothing to do with the challenged actions. I accept Judge Peck's recommendation and

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direct the Clerk to transfer this matter to the Middle District of Pennsylvania in the interest of justice Colleen McMahon, U.S.D.J.

Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Collen McMahon, 500 Pearl Street, Room 640, and to my chambers, 500 Pearl Street, Room 1370. Any requests for an extension of time for filing objections must be directed to Judge McMahon (with a courtesy copy to my chambers). Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 513 U.S. 822, 115 S. Ct. 86 (1994); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038, 113 S. Ct. 825 (1992); Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: New York, New York
May 27, 2008

Respectfully submitted,



Andrew J. Peck
United States Magistrate Judge

Copies to: Edward Kimley
U. S. Attorney's Office, S.D.N.Y.
Judge Colleen McMahon